



## Little River Band of Ottawa Indians

375 River Street  
Manistee, MI 49660  
(231) 723-8288

### Resolution # 05-0511-194

*Authorizes Tribal Ogema to execute Consulting Agreement between the Tribe and Kewegnong Engineering Services, Inc., to provide construction project management and inspection services for the water tower and water main projects and ratifies services already performed by engineer.*

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aníshinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) (4) and (c) to manage the properties of the Tribe; and

WHEREAS, the Housing Commission, Housing Department and the Little River Casino Resort have identified additional long and short term needs in water utility services and had embarked in the construction and erection of a water storage facility and a water main extension project ; and

WHEREAS, Indian Health Services through a Memorandum of Agreement dated October 15, 2001 properly approved by Tribal Council, committed funds to provide assistance to the Tribe to complete the construction of sanitation facilities, comprising the construction and erection of a water storage facility and the remaining water main expansion projects; and

WHEREAS, a segment of Indian Health Services funding is allocated to cover project management for the construction of the water storage facility and the remaining portion of the water main; and

WHEREAS, currently, due to personnel retirements, Indian Health Services is not in a position to perform the project management contracted, so has allowed the Tribe to hire a project manager engineer to take over that segment of their contractual obligations; and

WHEREAS, Mr. Jonathan Anderson, president of Kewegnong Engineering Services, Inc., retired Indian Health Services engineer, is willing and able to enter into a consulting agreement with the Tribe to perform the Indian Health Services the project management portion of the contracts at a cost not to exceed the amount of \$38,980.00; and

WHEREAS, Tribal Council approved the amendments to the Memorandum of Agreement, which provides for the administration by the Tribe of the project management for the construction of the water storage facility and the remaining portion of water main expansion authorizing the availability of funds for the Tribe to directly hire or contract for construction management functions described in the agreed upon amendments, and at the cost not to exceed the amount of \$39,025.00; and

WHEREAS, a time sensitive prescheduled preconstruction meeting and the product submittal documents demanded the services of the engineer subject of the contract before the formal approval of this contract, but after Indian Health Services and the Tribe amended the Memorandum of Agreement; and

NOW THEREFORE IT IS RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby authorizes the Ogema to execute the Consulting Agreement between the Tribe and Kewegnong Engineering Services, Inc., to provide construction project management and inspection services for the water tower and water main projects and ratifies the services already performed by the engineer.

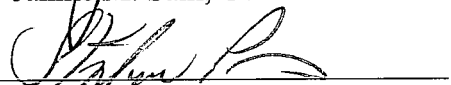
IT IS FURTHER RESOLVED THAT the Tribal Council authorizes a limited waiver of sovereign immunity for the purpose of consenting to be sued in its Tribal Court system. The Little River Band of Ottawa Indians waiver of its sovereign immunity in this Agreement only extends to disputes over the specific written rights and duties of the Little River Band of Ottawa Indians and Contractor pursuant to the Agreement and any extensions or renewals of it.

**CERTIFICATE OF ADOPTION**

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 8 FOR, 0 AGAINST, 0 ABSTAINING, and 1 ABSENT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on May 11, 2005, at the Little River Band's Dome Room in Manistee, Michigan, with a quorum being present for such vote.

Attest:

  
\_\_\_\_\_  
Janine M. Sam, Council Recorder

  
\_\_\_\_\_  
Stephen Parsons, Council Speaker

Distribution: Council Records  
Tribal Ogema  
Tribal Court

## **CONSULTING AGREEMENT**

This Consulting Agreement ("Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the Little River Band of Ottawa Indians ("Tribe"), and Kewegnong Engineering Services, Inc., a Michigan corporation ("Contractor").

### **RECITALS**

WHEREAS, the Little River Band of Ottawa Indians is a federally recognized Indian Tribe;

WHEREAS, Contractor has the requisite experience and expertise to provide construction project management and inspection services to assist the Tribe in the 250,000 gallon Elevated Water Tower and the M-22 Water Main Projects in Manistee;

WHEREAS, Indian Health Services had allocated funds to cover the costs of the services subject of this contract and such funds are being made available to the Tribe through an amendment of the Memorandum of Agreement between the Tribe and Indian Health Services.

WHEREAS, the Tribe desires to retain Contractor and Contractor is willing to assist the Tribe as an independent contractor and to comply with the terms and provisions and to perform all conditions of this Agreement;

NOW, THEREFORE, Contractor and the Tribe, in consideration of the mutual promises and covenants contained in this Agreement, agree as follows:

### **CONTRACTOR'S STATUS**

Contractor is an independent contractor for the Tribe. This agreement does not create nor should be construed as creating a principal-agent relationship, employer-employee relationship, nor a partnership or joint venture by and between Contractor and the Tribe.

### **SCOPE OF SERVICES**

Contractor shall provide the construction project management and construction inspections services for the Tribe based on the Contract Documents for Sanitation Facilities Construction regarding the 250,000 gallon Elevated Water Storage Tank project and the M-22 Water Main Extension, assuming the role and duties assigned in such contracts to the Indian Health Services engineer. The Contractor acknowledges receiving a copy of both contracts and all its ancillary documents, which become part of this

contract agreement in all its pertinent clauses. Contractor acknowledges that the Tribe will be requesting reimbursement from the Indian Health Services under the terms of a P.L. 93-638 contract for the fees and expenses paid to Contractor under this agreement. Contractor agrees to perform the services required under this agreement, including maintenance of records related to such services, as may be required under applicable Indian Health Services regulations to permit the Tribe to receive such reimbursement. During the term of this agreement, Contractor agrees to maintain insurance in amounts and of the type reasonably required by the Tribe's Risk Manager (see Exhibit "C").

### **DURATION**

The term of the independent contractor relationship created by this Agreement shall begin as of April 28, 2005 and shall remain in effect until delivery of the final payment request for the last project, whichever it may be, of the construction projects above, unless extended in a writing signed by both parties.

### **COMPENSATION**

Contractor shall be compensated an amount based on the Contractor's current rate schedule, a copy of which schedule is attached here as Exhibit "A". The attached rate schedule will not be modified during the term of this contract. Contractor understands that the total compensation paid for fees and reimbursable expenses will not exceed the amounts described in Exhibit A.

### **PROVISION AND CONFIDENTIALITY OF INFORMATION**

1. The Tribe shall furnish, or obtain from other sources, all documentation and information reasonably necessary for the Contractor to fulfill its duties and obligations in a timely fashion for the task assigned to it under this Agreement. The Contractor is hereby authorized to request any information as deemed necessary to perform his obligations in this contract from the project contractors or Indian Health Services.
2. The Contractor shall use the furnished documentation and information exclusively for the purposes of performing the duties and obligations of the task to it under this Agreement.
3. The Contractor shall keep and maintain as strictly confidential any information which Contractor shall learn about the Tribe or any information as the Tribe may from time to time impart to the Contractor regarding the Tribe's proprietary business affairs. The Contractor will not, either in whole or in part, now or at any time, disclose such documentation and information, either directly or indirectly, to any other person or entity, without the prior written consent of either the Tribe or any third party source from whom some of the documentation and information may have been obtained.
4. The Contractor has agreed to and signed the Consultant Conflict of Interest Disclosure Form, Exhibit "B".

## **INDEMNIFICATION OF CONTRACTOR**

The Tribe shall indemnify and hold Contractor, its shareholders, directors, officers, employees, agents and representatives, harmless from any and all claims, expenses, costs, fees, penalties, fines, damages, actions, complaints, judgments, and awards whatsoever, including Contractor's reasonable attorney's fees, arising out of or related to the actions of the Tribe under this agreement if intentional, malicious or grossly negligent, including, without limitation, any expenses, damages or fees and loss of profits for the termination of the Agreement due to the actions or omissions by the Tribe.

## **LIMITED WAIVER OF LITTLE RIVER BAND OF OTTAWA INDIANS' IMMUNITY**

Subject to the express provisions of this Agreement, the Little River Band of Ottawa Indians expressly waives its sovereign immunity for the purpose of consenting to be sued in its Tribal Court system. The Little River Band of Ottawa Indians waiver of its sovereign immunity in this Agreement only extends to disputes over the specific written rights and duties of the Little River Band of Ottawa Indians and Contractor pursuant to this Agreement and any extensions or renewals of this Agreement. The Contractor understands and agrees that the total amount of damages for loss of profits, exclusive of costs and attorney fees arising out any action to enforce this agreement, shall not exceed the amount to which Contractor is entitled under Exhibit "A".

## **NO WAIVER OF LITTLE RIVER BAND OF OTTAWA INDIANS' SOVEREIGN IMMUNITY**

Nothing in this Agreement shall be construed to be a waiver of the Little River Band of Ottawa Indians' sovereign immunity from suit in any state or federal court, notwithstanding the limited waiver of its sovereign immunity agreed upon in the prior section.

## **TERMINATION OF AGREEMENT**

This Agreement may be terminated by mutual consent of the Contractor and the Tribe. This agreement may also be terminated by the Tribe for cause if the Contractor breaches his obligations under this agreement if such breach is not cured within seven (7) calendar days of written notice of the breach. This agreement may be terminated by either the Tribe or Contractor for any reason, upon giving thirty (30) days written notice to the other party. The termination of this Agreement shall not affect the right of the Contractor to receive compensation for services performed under this Agreement prior to its termination nor of any party to exercise their legal rights under this Agreement or under law for the actions of the other party while this Agreement was in force.

## MISCELLANEOUS

The following provisions shall also apply to this Agreement.

- a. Neither the Contractor nor the Tribe may assign any of its rights or obligations under this Agreement to any other person or entity.
- b. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom charged.
- c. This Agreement may only be amended or modified by a written agreement jointly executed by the Contractor and the Tribe.
- d. This Agreement shall be binding upon and inure to the benefit of the Contractor and the Tribe, and their legal representatives, successors and assigns.
- e. This Agreement contains the entire agreement between the parties with respect to the transactions referred to within this Agreement and supersedes all prior arrangement or understandings, whether oral or written, with respect to the subject matter of this Agreement

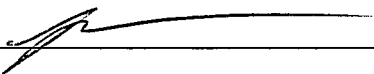
## NOTICES

All notices required or permitted to be given hereunder shall be in writing and shall be delivered to the persons identified below either: (a) by hand-delivery to such person at any location; or (b) by first class, certified or registered mail, addressed as shown below, or to such other addresses as the Party entitled to notice may designate from time to time. All notices shall be deemed given upon receipt.

If to Contractor: 4706 Lakeside Drive  
Brethren, MI 49619

If to the Tribe: 375 River Street  
Manistee, Michigan 49660

In witness hereto, the parties warrant and represent that they have the right, power and authority to execute this Agreement on behalf of their respective organizations, and so signify by affixing their signatures below.

  
\_\_\_\_\_

By Lee Sprague, Ogema

Little River Band of Ottawa Indians

  
\_\_\_\_\_

Jonathan Anderson, PE

Kewegnon Engineering Services, Inc.

Exhibit "A" Current Rate Schedule / Little River Band of Ottawa Indians - Kewegong Engineering Services Consulting Agreement  
M-22 Water Main and Newland Water Tower Construction Management Hours Estimate

Work Description	M-22 Water Main		Water Tower	
	Construction Management	Construction Inspection	Construction Management	Construction Inspection
Preconstruction Conference	4	4	0	0
Submittal Review and Approval	4	0	8	0
Construction Staking	8	8	2	2
Weekly Construction Progress Meeting	8	8	10	2
Weekly On Site Inspections	48	256	10	80
Change Order Processing	6	0	0	0
Progress Payment Review and Approval	12	0	12	0
Prefinal Inspection	4	8	4	4
Final Inspection	4	4	4	4
Contract Closeouts and As-built Approvals	16	0	16	0

Totals	114	288	66	92
			Rate per hour	Total
Construction Management		180	\$100.00	\$18,000.00
Construction Inspection		380	\$50.00	\$19,000.00
			Subtotal	\$37,000.00
Construction Management Mileage 14 trips @ 40 miles per trip at \$0.405 per mile				\$230.00 Rounded
Inspection Mileage 36 trips @ 120 miles per trip at \$0.405 per mile				\$1,750.00 Rounded
			Total	\$38,980.00

LRBOI: Initials  
KES: Initials

Date:  
Date:



**CONSULTANT CONFLICT OF INTEREST DISCLOSURE FORM**  
**Exhibit B**

I, Jonathan Anderson, President, on behalf of Kewegnong Engineering Services, Inc., a Michigan Corporation (the "Contractor"), declare this to be a full and complete disclosure of any and all conflicts of interest with the Little River Band of Ottawa Indians of Michigan. I affirm to the best of my knowledge and belief that:

The Contractor is not presently involved in nor a party to any legal actions against the Little River Band of Ottawa Indians of Michigan; that based upon any prior contracts with the Little River Band of Ottawa Indians of Michigan, if any, the Contractor does not contemplate initiating any legal actions against the Little River Band of Ottawa Indians of Michigan; that the Contractor is not presently involved in any activity or has any outside interests or agreements, including financial arrangements that conflict or suggests a potential conflict with the best interests of the Little River Band of Ottawa Indians of Michigan; the Contractor is not involved in nor owns any business investments which are related to or connected with the Little River Band of Ottawa Indians of Michigan, its programs, departments, or enterprises which the Contractor will be contracting with; the Contractor does not hold any positions as director or officer in any public or private groups, firms, organizations, or other entities which are substantially or wholly owned by the Little River Band of Ottawa Indians of Michigan; no representatives of the Contractor sit on any boards, commissions, or committees of the Little River Band of Ottawa Indians of Michigan; no officers, directors or shareholders of the Contractor has any conflict with any right of the Little River Band of Ottawa Indians of Michigan to property, information, or any other right to own and operate its enterprise, program, or trade free from undisclosed competitions or other violations of such rights of the Little River Band of Ottawa Indians of Michigan; the Contractor has no other contracts currently open with the Little River Band of Ottawa Indians of Michigan, except as herein disclosed and listed below:

(If NONE, please check       )  
(Attach additional pages if necessary.)

**During the contract period, Contractor agrees to promptly report any situation that might involve or appear to involve Contractor in any conflict of suggestion of a conflict of interest with the Little River Band of Ottawa Indians. If such a conflict arises during the agreement entered into or any extension thereof, Contractor shall immediately advise the Little River Band of Ottawa Indians Tribal Ogema and Tribal Council. Further, Contractor agrees that failure to report any conflict shall be cause to revoke or suspend the service license and/or to terminate the agreement entered into between the Contractor and the Little River Band of Ottawa Indians.**

Signed: \_\_\_\_\_  
By: Jonathan Anderson, President

Date: \_\_\_\_\_